

## REMARKS

Claims 1-20 are pending in the application after this amendment. The amendment and/or addition of claims is not to be considered in any way an indication of applicants' position on the merits of the amended and/or added claims. In the following sections of the Amendment the rejections set forth by the Examiner in the April 21, 2004, Office action are addressed. These rejections are respectfully traversed, and detailed arguments are set forth below.

### 35 USC §112

The Examiner rejected claims 2-4 and 6-11 under 35 USC §112, first paragraph, as the Examiner states that the claimed invention is not described in such full, clear, concise, and exact terms as to enable any person skilled in the art to make and use the same. Specifically, the Examiner states that the specification provides no support for the terms "first arm portion", "interior first arm surface", "first arm face", "second arm portion", "interior second arm surface", and "second arm face". This rejection is respectfully traversed.

Turning to the Examiner's rejection of the terms "first arm portion" and "second arm portion," applicants believe there is sufficient support throughout the specification, including the following section of the Brief Summary: "An alcove whirlpool seat of the present invention generally includes a seat member having a circumference with a seat back having integral or attached arm portions on opposite sides of the seat back). The seat back and at least part of the arm portions substantially define a whirlpool area and the arm portions define an open span through which the legs of a user extend when he is seated in the alcove whirlpool seat." (Page 4, lines 8-12, *emphasis added*.) The fact that they are plural and that the arm portions are shown in the figures as a pair would be sufficient to teach one skilled in the art that there was both a "first arm portion" and a "second arm portion." Further, the "pair of arms" 38a, 38b are discussed throughout the application and would be exemplary arm portions of a

horseshoe embodiment. If the Examiner would like additional reference numerals added to the specifications and figures, applicants would be pleased to provide such numbering.

Turning next to the Examiner's rejection of the terms "interior first arm surface" and "interior second arm surface," applicants respectfully submit that these terms are directed to structure that would have been understood to one skilled in the art and would have been understood in the context of the specification. However, for the sole purpose of furthering prosecution, the specification has been amended to specifically include these terms and reference numerals thereto. FIG. 6 has been amended to include the new reference numerals. As the terms "interior first arm surface" and "interior second arm surface" were in the originally submitted claims and the interior first and second arm surfaces were shown in the original drawings, applicants respectfully submit that no new matter has been added. Applicants respectfully submit that these amendments should overcome the Examiner's rejection.

As the terms "first arm face" and "second arm face" have been removed from all of the claims, applicants respectfully submit that this rejection is now moot.

### 35 USC §102(b)

The Examiner rejected claims 1 and 5 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,228,148 to Weir and U.S. Patent No. 5,333,322 to Weir (collectively, the "Weir references"). This rejection is respectfully traversed.

The Weir references are directed to a modular seat unit that may be used on the perimeter of a swimming pool. Jets 35, 50, and 52 are positioned on the seat back and direct water straight out. If a user were sitting in front of the jet, this would provide a therapeutic massage. If the seat were empty, the stream from the jet would flow directly into the swimming pool. No whirlpool would be created. For purposes of this response, applicants will not specifically dispute the Examiner's assertion that "'spa system' defines no structure not inherent in a swimming pool," although applicants specifically reserve the right to present such arguments in future responses. The

Examiner then states that "Clause (d) is deemed met by the flow through 35." Clause (d) of claim 1 specifically sets forth a "jet nozzle positioned to direct a stream within said whirlpool area." Applicants would like to emphasize that it is the stream that is directed within whirlpool area, not the jet nozzle that is positioned within the whirlpool area. As set forth above, the Weir references do not teach or suggest a whirlpool area, but even if they did, the Weir jet nozzles are positioned to direct a stream out of the seat and into the pool. As will be discussed below, the Examiner did not provide any guidance as to how claim element (e) of claim 1 was met.

Each of the independent claims includes the specific limitation of a whirlpool. For example, claim 1 specifically sets forth "said at least one jet nozzle, said seat back, and said arm portions together creating a whirlpool within said whirlpool area." Claim 5 specifically sets forth that "at least one jet nozzle positioned to direct a stream within said whirlpool area to create a whirlpool flow" and that "said whirlpool flow within said whirlpool area is substantially separate from spa water flow." New independent claim 17 includes similar language. As set forth in the Brief Summary of the specification, a whirlpool is defined as a rapidly rotating current of water and it is this type of whirlpool that the present invention seeks to emulate by rotating water in a substantially circular or oval fashion. Applicants respectfully submit that neither of the Weir references teaches or suggests the use of a whirlpool at all. Further, neither of the Weir references teaches or suggests a whirlpool within a whirlpool area defined by a seat back and at least part of the arm portions. As at least one claimed limitation is not taught or suggested by the cited references, applicants respectfully submit that the burden of providing a prima facie case of anticipation has not been met. Further, applicants respectfully submit that the independent claims are allowable for these and other reasons and that all the claims depending therefrom are allowable for the same reasons as well as for the specific structure claimed therein.

Most of the claims include additional claimed structure not taught or suggested in the Weir references. For purposes of example only, applicants will discuss several of the claims specifically. Applicants specifically reserve the right to

present arguments directed to claims not discussed below and/or additional elements of the discussed claims.

Claims 3, 7, and 19 set forth specific structure not taught or suggested by the Weir references. Specifically, these claims set forth at least one jet nozzle is positioned in the interior first arm surface to direct a stream toward the seat back and at least one jet nozzle positioned in the interior second arm surface to direct a stream across the open span and toward the interior first arm surface. Applicants respectfully submit that neither of the Weir references teaches or suggests the use of a jet nozzle directing a stream toward the seat back or the use of a jet nozzle directing a stream across the open span and toward the interior first arm surface.

Claims 4, 8, 13, 16, and 20 set forth specific structure not taught or suggested by the Weir references. Specifically, these claims set forth at least one jet nozzle directing a stream around the seat back and at least one jet nozzle directing a stream across the open span. Applicants respectfully submit that neither of the Weir references teaches or suggests the use of a jet nozzle directing a stream around the seat back or the use of a jet nozzle directing a stream across the open span.

Claim 5 specifically sets forth that "said whirlpool flow within said whirlpool area is substantially separate from spa water flow." Applicants respectfully submit that neither of the Weir references teaches or suggests this limitation.

New claim 17 specifically sets forth "creating a whirlpool of water rotating in a substantially circular or oval fashion." Applicants respectfully submit that neither of the Weir references teaches or suggests this limitation.

#### Information Disclosure Statement (IDS)

Applicants also submit herewith (1) a copy of the originally submitted four page Information Disclosure Statement (IDS) submitted at filing; (2) a copy of the return receipt postcard in which receipt of the IDS (and the attached references) was acknowledged; and (3) a copy of the PAIR File History of this application showing that

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the IDS was received on August 22, 2003. Applicants respectfully request that the references set forth on the IDS be considered and acknowledged.

#### CONCLUDING REMARKS

In view of the above, it is submitted that pending claims are patentable over the Weir references. Accordingly, the Examiner is requested to reexamine the application, to allow the claims, and to pass the application on promptly to issue.

A Petition for Extension of Time for one month is enclosed herewith.

Please charge Deposit Account No. 50-2115 for any additional fees which may be required.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Karen Oster", is written over a horizontal line.

Karen Dana Oster  
Reg. No. 37,621  
Of Attorneys of Record  
Tel: (503) 810-2560